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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/898,735	07/03/2001	Michael J. Gazewood	115.015	5587

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EXAMINER

HEWITT, JAMES M

ART UNIT	PAPER NUMBER
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3679

DATE MAILED: 07/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/898,735

Applicant(s)

GAZEWOOD, MICHAEL J.

Examiner

James M Hewitt

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 21-37 is/are pending in the application.
- 4a) Of the above claim(s) 29-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-28 and 34-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "10" has been used to designate both the top end of the top swage and the second outer cylindrical surface. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the terms "first cylindrical anchoring member", "second cylindrical anchoring member", "first cylindrical sleeve" and "second cylindrical sleeve" should appear in the specification.

### ***Claim Objections***

Claims 21, 24 and 34-35 are objected to because of the following informalities: "longitudinal center of axis" should be changed to "longitudinal center axis". Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 24-28 and 34-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 24 line 13, "first" should be "second" and "second plurality of" should be inserted before "continuous".

In claim 34 line 5, "within" should be changed to "about".

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 21-28 and 34-37 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 and 12 of U.S. Patent No. 6,276,690. Although the conflicting claims are not identical, they are

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not patentably distinct from each other because the subject matter and scope of the claims are substantially the same.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-28 and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Owen et al (US 3,948,321).

Owen et al discloses an anchoring apparatus for use in a tubular member, the apparatus comprising: a top swage member (27) having a longitudinal center axis, wherein the top swage member has a first cylindrical surface that extends to a second conical surface; a bottom swage member (29) having a longitudinal center axis, wherein the bottom swage member has a first cylindrical surface that extends to a second conical surface; a first cylindrical anchoring member/sleeve (31) disposed about the top swage member and wherein said first cylindrical anchoring member has a complete outer perimeter, said anchoring member containing a first plurality of continuous, individual circumferential ribs (see Figures 4A and 6) disposed about said outer perimeter, wherein said ribs comprise annular grooves encircling said anchoring member, and wherein said anchoring member has a top end and a bottom end and wherein said first cylindrical surface of said top swage member is concentrically

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disposed within said anchoring member; a second cylindrical anchoring member/sleeve (33) having the same construction as the first (31); setting means (11) for driving said top swage member longitudinally downward relative to said top swage's center axis and radially deforming said first anchoring member to expand the member and ribs thereof outward, and for driving said bottom swage member longitudinally downward relative to said bottom swage's center axis and radially deforming said second anchoring member to expand the member and ribs thereof; wherein said first and second anchoring members/sleeves include seals (45).

Owen et al fails to teach the hardness of the anchoring members, yet states that the members are sufficiently malleable and are adapted to be expanded. Further in another patent to Owen et al, US 3,746,091, the material is said to be a low carbon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ anchoring members with a hardness of 105 or less on the Rockwell B scale since low carbon, malleable steel is consistent with such a hardness and it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Owen et al fails to teach the radius of curvature of his annular grooves. Nevertheless, it would have been obvious to one having ordinary skill in the art at the time the invention was made to design the ribs/grooves to include a radius of curvature range between 0.030 to 0.060 inches, and specifically at 0.0470 inches with a height of 0.033 inches, since it has been held that where the general conditions of a claim are

disclosed in the prior art, discovering the optimum or workable ranges or values of a result effective variable involves only routine skill in the art. *In re Aller*, 105 USPQ 233 & *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James M Hewitt whose telephone number is 703-305-0552. The examiner can normally be reached on M-F, 930am-600pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne Browne can be reached on 703-308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1020.

jmh  
July 2, 2002

  
*Lynne H. Browne*  
*Supervisory Patent Examiner*  
*Technology Center 3620*